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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services)  
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)  
)

GEN Docket No. 90-314

RM-7140, RM-7175, RM-7618

**REPLY TO OPPOSITIONS  
TO PETITIONS FOR RECONSIDERATION**

PMN, Inc. ("PMN") hereby submits its Reply to the Oppositions to Petitions for Reconsideration of the Second Report and Order in the captioned proceeding, 8 FCC Rcd 7700 (1993) ("Second Report").

**I. Well-reasoned support has been advanced for elimination or relaxation of the cellular eligibility and attribution rules.**

A significant number of parties in their petitions for reconsideration and oppositions have addressed the cellular eligibility and attribution restrictions contained in the newly adopted PCS rules. Several such parties advocate the complete elimination of the eligibility rule for all cellular carriers. Others seek broader exemptions from the restrictions by increasing the attributable interest thresholds, increasing the overlap of cellular and PCS service area required, or exempting certain classes of participants.

Common among the arguments for complete elimination of the cellular eligibility rule are that cellular carriers' expertise and infrastructure will afford service to the public

efficiently and expeditiously.<sup>1</sup> In addition, proponents of elimination argue that cellular carriers are being unfairly and unnecessarily excluded from participation in PCS and that allegations of undue market power are unfounded.<sup>2</sup>

Those advocating relaxation of the cellular eligibility rules argue that the restrictions have no relationship to market power,<sup>3</sup> that limited interests cannot use cellular service to thwart PCS competition,<sup>4</sup> that significant differences exist between cellular and PCS which will inhibit the use of cellular spectrum for PCS,<sup>5</sup> and that the Congressional mandate to promote the development and deployment of new services, especially in rural areas, is not being fostered by the restriction.<sup>6</sup> Several parties focused on the unjustified impact of the cellular restriction on local exchange carriers. They demonstrate how the eligibility rule has the most harsh impact on independent local exchange carriers, who cannot impede PCS competition, but who can effectively deploy PCS to customers, especially in non-metropolitan areas.<sup>7</sup>

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<sup>1</sup>See Opposition/Comments of the Cellular Telecommunications Industry Association ("CTIA") at 3, Comments of McCaw Cellular Communications, Inc. ("McCaw") at 2-3, 4-7.

<sup>2</sup>See McCaw at 7-9, CTIA at 4-5.

<sup>3</sup>See Opposition of NYNEX Corporation ("NYNEX") at 3, Opposition of Nextel Communications ("Nextel") at 8-10, Opposition of United States Telephone Association ("USTA") at 5, Comments of GTE ("GTE") at 4, Comments of Telephone and Data Systems ("TDS") at 6-7.

<sup>4</sup>See Opposition of PMN ("PMN") at 2-3, USTA at 5.

<sup>5</sup>See PMN at 3-4.

<sup>6</sup>See PMN at 4-5, USTA at 5.

<sup>7</sup>See GTE at 3, PMN at 6-7, USTA at 5.

PMN believes that the arguments it has made and those advanced by others uniformly provide firm support for relaxation of the cellular eligibility and attribution rules, if not their outright elimination. If the Commission does not eliminate the rule, it should exempt limited partnership interests and consortia of such interests, particularly those held by independent local exchange carriers, from the eligibility rule. This position is fully supported by the arguments in this proceeding and accomplishes the Congressional mandate and Commission purposes of deploying new telecommunications services, particularly in non-metropolitan areas. Furthermore, it takes into account those situations where independent local exchange carriers have limited interests in cellular licensees pursuant to Commission-encouraged settlements and procedures, but whose interests are geographically concentrated due to their limited resources and relatively small local exchange service areas. PMN's proposal should also adequately address those concerns expressed by those parties who advocate specific exemptions from the cellular eligibility and attribution rules.

**II. Arguments favoring retention of the cellular eligibility rules are insufficient to justify the restriction.**

Several parties advanced arguments for the retention of the eligibility rules in the case of rural telephone companies. Those arguments are particularly ill-founded and must be rebutted. They apparently are based on the premise that rural telephone companies possess monopoly power both in the provision of local exchange and cellular service<sup>8</sup> and that the pro-competitive benefits of the Commission's policies should be extended to rural customers by restricting rural telephone companies in their provision of PCS in their service

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<sup>8</sup>Comments and Opposition of General Communications ("General") at 7.

areas.<sup>9</sup> One party based its position for retention of the cellular eligibility rule on the concern that local exchange carrier and RBOC-affiliated cellular carriers could adversely affect the viability of other cellular carriers through exclusionary conduct.<sup>10</sup>

Such arguments fail to take into account the fact that the more rural areas of the country are not as economically attractive as more densely populated areas to provide local exchange or cellular services. Likewise, such areas may not be as attractive initially for PCS. Nevertheless, the telephone companies serving those areas have consistently, economically and reliably provided local exchange service for decades. With the advent of cellular, some of them were able to participate, but often on a non-controlling limited partnership basis. The Commission has recognized the local exchange carriers' role and provided for their full participation in PCS.<sup>11</sup> Because of their expertise and ability to deploy PCS in their own small service areas, their generally limited and non-controlling interest in cellular licensees, and their desire to provide viable service utilizing new technology, local exchange carriers' eligibility for PCS should not be determined on the basis of allegations of "monopoly power" in the provision of local exchange service. In fact, if local exchange carriers serving rural areas are allowed to offer PCS, such a policy will reinforce their ability to fulfill their universal service obligations in areas that would otherwise not be economical. Furthermore, local exchange carriers' participation in cellular should not be the basis for restricting their

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<sup>9</sup>Opposition of MCI ("MCI") at 15.

<sup>10</sup>Opposition of Cellular Information Systems, Inc. ("CIS") at 3-8.

<sup>11</sup>Second Report at 7747-7752.

participation in PCS, particularly if they hold only limited partnership interests in cellular licensees.

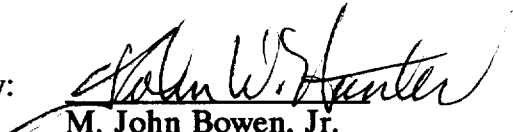
With regard to the concern about possible cellular "exclusionary tactics" on the part of wireline cellular carriers, the Commission has adopted adequate interconnection and other requirements that protect against such practices. In addition, local exchange carrier participation in PCS should not affect that situation.

WHEREFORE, PMN continues to advocate the elimination of the cellular eligibility and attribution restrictions of Section 22.904 of the Commission's Rules or a modification of such rules to exempt limited partnership interests and consortia of such interests.

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CERTIFICATE OF SERVICE

I, Shannon E. Howell, hereby certify that a copy of the foregoing Reply to Oppositions to Petitions for Reconsideration of PMN, Inc. was mailed, postage prepaid, first-class United States mail, this thirteenth day of January, 1994, to the parties on the attached list.

  
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